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SERGEUS DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MEJ

ASPEN GROVE OWNERS ASSOCIATION,
a Washington non-profit corporation,

Plaintiff,

v.

PARK PROMENADE APARTMENTS, LLC, a
California limited liability company;
WINDBRIDGE, LLC, a California limited
liability company; HOLTON KABILI
SEATTLE, LLC, a dissolved Colorado limited
liability company; ALTMAN SEATTLE, LLC,
a dissolved Colorado limited liability company;
DOE DECLARANT AFFILIATES 1-20; DON
ALTMAN, an individual; SCOTT A.
HOLTON, an individual; SHIMON KABILI,
an individual; and DOE PRINCIPALS 1-10,

Defendants.

CV No: 08 3873

COMPLAINT FOR:

- (1) Breach of Implied Warranty of Quality under WCA
- (2) Failure to Provide or Amend Public Offering Statement
- (3) Misrepresentations and Omissions in Public Offering Statement
- (4) Fraudulent Concealment
- (5) Breach of Fiduciary Duty
- (6) Violation of the Consumer Protection Act
- (7) Relief from Fraudulent Transfers
- (8) Improper Winding Up of Dissolved LLC

DEMAND FOR JURY TRIAL

1 Plaintiff ASPEN GROVE OWNERS ASSOCIATION ("the Association") hereby asserts
2 the following claims for relief:

3 **I. JURISDICTION**

4 1.1 This court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) because
5 the amount in controversy exceeds \$75,000, exclusive of interest and costs, and the dispute is
6 between a citizen of Washington (Plaintiff) and citizens of California and Colorado (Defendants).

7 **II. VENUE**

8 2.1 Venue lies in this court pursuant to 28 U.S.C. § 1391(a)(3) because jurisdiction of
9 this action is founded solely on diversity of citizenship, the defendants WINDBRIDGE, LLC and
10 PARK PROMENADE APARTMENTS, LLC are subject to personal jurisdiction in this district,
11 and there is no district in which this action may otherwise be brought in its entirety.

12 **III. INTRADISTRICT ASSIGNMENT**

13 3.1 For purposes of Civil L.R. 3-2(c) and (d), this action arises in the city of San
14 Francisco, San Francisco County.

15 **IV. PARTIES**

16 4.1 Pursuant to a Declaration of Condominium for Aspen Grove Condominiums ("the
17 Declaration"), and its Articles of Incorporation, the Association, a Washington non profit
18 corporation, was established under the Washington Condominium Act, Revised Code of
19 Washington ("RCW"), Chapter 64.34, as the homeowners association for the Aspen Grove
20 Condominiums development ("the Project.") Pursuant to the Declaration, and/or its amendments,
21 and pursuant to RCW 64.34.304, the Association has the duty to maintain, repair, replace and
22 restore all of the common elements and Association property located in and on the Project, located
23 in King County, Washington, and has the duty to repair, replace and restore damage to the Project.
24
25

1 4.2 Pursuant to RCW 64.34.304(1)(d), the Association has the right to institute litigation
2 “in its own name on behalf of itself or two or more unit owners on matters affecting the
3 condominium.” The Association is instituting this action pursuant to that statute, on behalf of itself
4 and all of the unit owners on matters affecting the Project.

5 4.3 PARK PROMENADE APARTMENTS, LLC (“Park Promenade”) is a California
6 limited liability company. Park Promenade is named in the Declaration as a Declarant of the
7 Project. The Association is informed and believes, and on that basis alleges, that Park Promenade
8 had an ownership interest in the Project, and/or had or has an ownership interest in the Project and
9 the sales proceeds from the Project.
10

11 4.4 WINDBRIDGE, LLC (“Windbridge”) is a California limited liability company.
12 Windbridge is named in the Declaration as a Declarant of the Project. The Association is informed
13 and believes, and on that basis alleges, that Windbridge had an ownership interest in the Project,
14 and/or had or has an ownership interest in the Project and the sales proceeds from the Project.
15

16 4.5 HOLTON KABILI SEATTLE, LLC (“Holton Kabili”) is a voluntarily dissolved
17 Colorado limited liability company. Holton Kabili is named in the declaration as a Declarant of the
18 Project. The Association is informed and believes, and on that basis alleges, that Holton Kabili had
19 an ownership interest in the Project, and/or had or has an ownership interest in the Project and the
20 sales proceeds from the Project.

21 4.6 ALTMAN SEATTLE, LLC (Altman Seattle) is a Colorado limited liability and is
22 named in the Declaration as a Declarant of the Project, and is a “Dealer” of the Project units
23 pursuant to RCW 64.34.020(12), and is the entity which transferred title to the unit owners. The
24 Association is informed and believes, and on that basis alleges, that Altman Seattle had an
25

1 ownership interest in the Project, and/or had or has an ownership interest in the Project and the
2 sales proceeds from the Project.

3 4.7 DOE DECLARANT AFFILIATES 1-20 are non-Washington residents, persons and
4 entities who qualify as “alter egos” of any of the Declarants under Washington law, and/or who
5 pursuant to RCW 64.34.020(1) and/or RCW 19.40.011(1) qualify as “affiliates” of the Declarants
6 any other of DOE DECLARANT AFFILIATES 1-20, and/or are persons or entities who qualify
7 pursuant to RCW 19.40.011(7) as “insiders” of Declarants and/or “insiders” of any other of DOE
8 DECLARANT AFFILIATES 1-20.
9

10 4.8 Park Promenade, Holton Kabili, Altman Seattle, and DOE DECLARANT
11 AFFILIATES 1-20 are collectively referred to herein as the “Declarants.”

12 4.9 SHIMON KABILI (“Mr. Kabili”) is believed to be a citizen of Israel, a resident of
13 Colorado, and the managing member of Holton Kabili, Park Promenade and Windbridge. The
14 Association is informed and believes, and on that basis alleges, that at all times relevant hereto
15 Kabili was a shareholder, officer, director, member, alter ego, and/or principal of Holton Kabili,
16 Park Promenade, Windbridge, and/or Altman Seattle, and/or other unknown affiliates of the
17 Declarants, and had or does currently have an ownership interest in the Project and/or in the sales
18 proceeds from the Project.
19

20 4.10 DON ALTMAN (“Mr. Altman”) is a resident of Colorado and on information and
21 belief is the sole member of Altman Seattle, LLC. The Association is informed and believes, and
22 on that basis alleges, that at all times relevant hereto, Mr. Altman was a shareholder, officer,
23 director, member, alter ego, and/or principal of Altman Seattle, and/or other unknown affiliates of
24 the Declarants, and had or does currently have an ownership interest in the Project and/or in the
25 sales proceeds from the Project.

1 4.11 SCOTT A. HOLTON (Mr. Holton) is a resident of Colorado and on information and
2 belief is a member of Holton Kabili Seattle, LLC. The Association is informed and believes, and
3 on that basis alleges, that at all times relevant hereto, Mr. Holton was a shareholder, officer,
4 director, member, alter ego, and/or principal of Holton Kabili Seattle, and/or other unknown
5 affiliates of the Declarants, and had or does currently have an ownership interest in the Project
6 and/or in the sales proceeds from the Project.

7 4.12 DOE PRINCIPALS 1-10 are non-Washington residents and shareholders, officers,
8 directors, members, alter egos, and/or principals of the Declarants and unknown affiliates of the
9 Declarants who had or do currently have an ownership interest in the Project and/or in the sales
10 proceeds from the Project.

11 4.13 Mr. Kabili, Mr. Altman, Mr. Holton and DOE PRINCIPALS 1-10 are collectively
12 referred to herein as "Declarants' Principals." All or some of Declarants' Principals are "insiders"
13 of all or some of Declarants pursuant to RCW 19.40.011. Moreover, all or some of Declarants'
14 Principals are representative, successor, or assign of some or all of the Declarants.
15

16
17 **V. FIRST CLAIM – AGAINST DECLARANTS FOR BREACH OF IMPLIED**
18 **WARRANTIES OF QUALITY UNDER THE WASHINGTON CONDOMINIUM ACT.**

19 5.1 Pursuant to RCW 64.34.445 of the Washington Condominium Act ("the WCA"), the
20 Declarants impliedly warranted that the units and common elements in the Project were suitable for
21 the ordinary uses of real estate of its type, and that the improvements made or contracted for by the
22 Declarants or on their behalf were free from defective materials and were constructed in accordance
23 with sound engineering and construction standards, and in a workmanlike manner in compliance
24 with all laws then applicable.
25

1 5.2 The Declarants, or others acting on their behalf, made and/or contracted for
2 improvements to property that now constitute the Project's common elements, limited common
3 elements, and units.

4 5.3 The Declarants breached their implied warranties under the WCA in that there are
5 numerous defects or deficiencies in the Project's materials, installation of the materials, design
6 and/or construction of the Project's building envelope system and underlying components, its roofs,
7 windows, structural components, architectural components, and fire and life safety systems, and
8 mechanical and electrical systems. Some or all of these defects or deficiencies render units and
9 common elements unsuitable for ordinary uses of real estate of their type. Further, the Declarants
10 negligently breached their implied warranties under the WCA in that there are latent physical
11 hazards at the Project which render it, or portions of it, unsuitable for ordinary uses of real estate of
12 its type.
13

14 5.4 The defects and deficiencies are both in the original construction, and in
15 improvements to the Project made or contracted for by or on behalf of the Declarants.
16

17 5.5 In addition to the defects or deficiencies listed above, the Association is informed
18 and believes, and on that basis alleges, that there are other components of the Project which are
19 defectively designed, installed and/or constructed, and which would be revealed through additional
20 investigation.

21 5.6 The defects or deficiencies listed above have resulted in physical damage to the
22 common elements, limited common elements, and units of Project, as well as personal property of
23 unit owners. Some of the defects and deficiencies began causing such physical damage while
24 construction or renovations were under way. The defects and deficiencies are presently causing
25 such physical damage, and will likely result in additional physical damage. The physical damage

1 includes, but is not limited to, damage caused by water intrusion into and through the building
2 envelope and its underlying components, which has caused exterior and interior building surfaces
3 and underlying components to deteriorate prematurely, and which has physically damaged various
4 other building components and other property, including personal property, and has reduced the
5 useful life and structural integrity of the Project's building components.

6 5.7 As a direct and proximate result of the relevant Declarants' conduct, the Association
7 and its unit owners have been damaged in excess of \$75,000, in an amount to be proven at trial.
8 Such damages include, but are not limited to, the cost of repairing the damage to the Project caused
9 by the defective design, workmanship and materials; the cost of correcting defective conditions and
10 damage, including investigative costs and scope-of-repair development costs as necessary
11 components thereof; the loss of use of the units and common areas; the loss of the marketability of
12 the units; and operating and reserve expenses over and above those reasonably anticipated by the
13 Association.
14

15 5.8 Pursuant to RCW 64.34.455, and/or the sales agreements used by the Declarants, the
16 Association is entitled to its reasonable attorneys' fees and other costs incurred in prosecuting this
17 action.
18

19 **VI. SECOND CLAIM – AGAINST DECLARANTS FOR FAILURE TO PROVIDE**
20 **VALID PUBLIC OFFERING STATEMENT AND FAILURE TO PROVIDE AMENDED**
21 **PUBLIC OFFERING STATEMENT**

22 6.1 The Project is a "conversion condominium" as defined in RCW 64.34.020, for
23 which public offering statements have been first delivered pursuant to chapter 64.34 RCW after
24 August 1, 2005.

25 6.2 In addition or the alternative, Declarants did not amend the public offering statement
for the Project and/or did not deliver an amended public offering statement to any unit purchaser as

1 required by RCW 64.34.415(5), RCW 64.34.405(1), RCW 64.34.405(3), and RCW 64.34.420(1)
2 after August 1, 2005, to reflect change in the identity of Declarants and/or changes in other material
3 information, including defects and damage discovered by Declarants during the ongoing conversion
4 process.

5 6.3 On information and belief, in converting the Project buildings and facilities to
6 condominiums, the Declarants did not seek or receive a permit for "rehabilitative construction" as
7 defined by RCW 64.55.020.

8 6.4 In converting the Project buildings and facilities to condominiums, the Declarants
9 did not submit building enclosure design documents to a building department pursuant to RCW
10 64.55.020.

12 6.5 In converting the Project buildings and facilities to condominiums, the Declarants
13 did not have the Project building enclosures inspected by a qualified inspector pursuant to RCW
14 64.55.030-050.

15 6.6 Pursuant to RCW 64.34.415, RCW 64.55.090, and RCW 64.34.410(n), the
16 Declarants had a duty to hire a qualified building enclosure inspector to: (1) inspect the Project, by
17 such intrusive or other testing, such as removal of siding or other building enclosure materials,
18 believed by the inspector in his or her professional judgment to be necessary to ascertain the
19 manner in which the building enclosure was constructed; (2) evaluate, to the extent reasonably
20 ascertainable and in the professional judgment of the inspector the condition of the building
21 enclosure including whether such condition has adversely affected or will adversely affect the
22 performance of the building enclosure to waterproof, weatherproof, or otherwise protect the
23 building or its components from water or moisture intrusion; (3) include in an inspection report
24 recommendations for repairs to the building enclosure that in the professional judgment of the
25

1 qualified building inspector are necessary to repair a design or construction defect in the building
2 enclosure that results in the failure of the building enclosure to perform its intended function and
3 allows unintended water penetration not caused by flooding and repair damage thereby caused; and
4 (4) include in an inspection report a statement of the extent of the building enclosure inspection
5 performed by the qualified inspector, the information obtained as a result of that inspection, the
6 manner in which any required repairs were performed, the scope of those repairs, and the names of
7 the persons performing those repairs.

8
9 6.7 Pursuant to RCW 64.55.090(e) and RCW 64.34.410(1)(nn) and RCW
10 64.34.415(1)(b), the Declarants had a duty to provide the above-referenced inspection and repair
11 report, signed by a qualified building enclosure inspector, to unit purchasers as part of a public
12 offering statement.

13 6.8 Declarants breached their duties under RCW 64.34.415, RCW 64.55.090 and RCW
14 64.34.410(nn) in that: (1) the Declarants caused no intrusive or other testing of the building
15 enclosure to be performed; (2) the Declarants did not cause a qualified building enclosure inspector
16 to evaluate, to the extent reasonably ascertainable, the condition of the building enclosure; (3) the
17 Declarants did not cause a qualified building inspector to report on recommendations for repairs
18 necessary to repair a design or construction defect in the building enclosure that results in water
19 penetration; (4) the Declarants did not cause a qualified building enclosure inspector to report on
20 the extent of the building envelope inspection performed, information obtained as a result of that
21 inspection, the manner in which required repairs were performed, the scope of the repairs, or the
22 names of the persons performing those repairs.

23
24 6.9 Declarants breached their duties under RCW 64.55.090(e), RCW 64.34.415, RCW
25 64.34.410(1)(nn) in that the inspection report included with the public offering statements delivered

1 to the Project's unit purchasers was not signed, and/or not signed by a qualified building enclosure
2 inspector.

3 6.10 Pursuant to RCW 64.55.090, Declarants' failure to deliver an inspection and repair
4 report that complies with RCW 64.55.090 constituted a failure to deliver a public offering
5 statement for purposes of Chapter 64.34 RCW, the WCA.

6 6.11 As a direct and proximate result of the Declarants' failure to deliver a public
7 offering statement containing an inspection and repair report that complies with RCW 64.55.090
8 and/or RCW 64.34.415, and as a result of the Declarants' failure to amend the public offering
9 statement as required by statute, the Association and its unit owners have suffered property damage
10 as described above, and have been damaged in excess of \$75,000, in an amount to be determined at
11 trial. Such damages include, but are not limited to, the cost of repairing the damage to the Project
12 caused by the defective design, workmanship and materials; the cost of correcting defective
13 conditions and damage, including investigative costs and scope-of-repair development costs as
14 necessary components thereof; the loss of use of the units and common areas; the loss of the
15 marketability of the units; operating and reserve expenses over and above those reasonably
16 anticipated by the Association; and other consequential damages.
17

18 6.12 Pursuant to the WCA, the Association is entitled to its reasonable attorneys' fees
19 incurred in prosecuting this action.
20

21 6.13 In addition, the Association is entitled to the greater of (a) all actual damages or (b)
22 ten percent of the price of each unit for willful failure to provide a public offering statement, or
23 three percent of the purchase price for each unit for every other failure to provide a public offering
24 statement.
25

**VII. THIRD CLAIM – AGAINST DECLARANTS AND DECLARANTS’ PRINCIPALS
FOR MISREPRESENTATIONS AND/OR OMISSIONS OF MATERIAL FACT**

7.1 On information and belief, Declarants and Declarants’ Principals were aware of, or during the course of sales of units became aware of, facts regarding the presence of defects in the physical condition of the Project, as well as facts regarding physical hazards that particularly affect the condominium, all of which were not readily ascertainable by unit purchasers upon reasonable inspection.

7.2 By reason of this factual knowledge of defective conditions and physical hazards, Declarants and Declarants’ Principals also knew, or in the exercise of reasonable care should have known, that the reserve estimate and operating budget (including but not limited to assumptions regarding remaining useful life of Project components and the number of components in need of attention), and other materials included in the public offering statement(s), were inaccurate, deceptive, and misleading.

7.3 Declarants and Declarants’ Principals intentionally and/or negligently failed to disclose facts regarding known defects and physical hazards, and intentionally and/or negligently failed to adjust the reserve estimate and operating budget to reflect the actual condition of the Project.

7.4 Pursuant to RCW 64.34.415(1)(a), Declarants and Declarants’ Principals had a duty to include in the public offering statement for the Project either a copy of a report prepared by an independent, licensed architect or engineer, or a statement based on such report, which report or statement describes, to the extent reasonably ascertainable, the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the Project.

1 7.5 Pursuant to RCW 64.34.415, RCW 64.55.090, and RCW 64.34.410(n), the
2 Declarants and Declarants' Principals also had a duty to hire a qualified building enclosure
3 inspector to: (1) inspect the Project, by such intrusive or other testing, such as removal of siding or
4 other building enclosure materials, believed by the inspector in his or her professional judgment to
5 be necessary to ascertain the manner in which the building enclosure was constructed; (2) evaluate,
6 to the extent reasonably ascertainable and in the professional judgment of the inspector the
7 condition of the building enclosure including whether such condition has adversely affected or will
8 adversely affect the performance of the building enclosure to waterproof, weatherproof, or
9 otherwise protect the building or its components from water or moisture intrusion; (3) include in an
10 inspection report recommendations for repairs to the building enclosure that in the professional
11 judgment of the qualified building inspector are necessary to repair a design or construction defect
12 in the building enclosure that results in the failure of the building enclosure to perform its intended
13 function and allows unintended water penetration not caused by flooding and repair damage
14 thereby caused; and (4) include in an inspection report a statement of the extent of the building
15 enclosure inspection performed by the qualified inspector, the information obtained as a result of
16 that inspection, the manner in which any required repairs were performed, the scope of those
17 repairs, and the names of the persons performing those repairs. The Declarants had a further duty
18 to provide said building enclosure inspection and repair report, signed by a qualified building
19 enclosure inspector, to unit purchasers as part of a public offering statement.
20

21
22 7.6 In preparing or assisting in the preparation of the public offering statement for the
23 Project, Declarants and Declarants Principals intentionally and/or negligently failed to include a
24 report or statement that complies with RCW 64.34.415(1)(a). The report that was included with the
25 public offering statement fails to meet statutory requirements, and is deceptive and misleading in

1 that it: (a) does not disclose material defective conditions that were reasonably ascertainable by an
2 independent, licensed architect or engineer undertaking a reasonable, good-faith examination of the
3 Project's common elements, and/or (b) materially misrepresents the condition of the Project's
4 structural and/or mechanical and/or electrical systems, and/or (c) does not reflect the condition of
5 the relevant components at the time of sale to the public.

6 7.7 Moreover, in preparing or assisting in the preparation of the public offering
7 statement for the Project, Declarants and Declarants' Principals intentionally and/or negligently
8 failed to include a building enclosure report or statement that complies with RCW 64.34.415 in that
9 the report that was included in the public offering statement contains: no report on inspection of the
10 building enclosure, no report on the condition of the building enclosure, no recommendations for
11 repair of the building enclosure, no statement as to the extent of any inspection, no statement of
12 information obtained in such building enclosure inspection, no description of repairs, and no
13 statement of the names of persons conducting repairs to the building enclosure.

14 7.8 The misrepresentations and omissions described above concerned facts material to
15 unit owners' decisions to purchase property at the Project, and to the Association's planning and
16 assessments for reserves and operating expenses.

17 7.9 On information and belief, discovery will reveal further material misrepresentations
18 and omissions of material fact in the course of sale of units.

19 7.10 As a direct and proximate result of the misrepresentations in and/or omissions of
20 material fact from the public offering statement, the Association and its unit owners have suffered
21 property damage as described above, and have been damaged in an amount in excess of \$75,000, to
22 be determined at trial. Such damages include, but are not limited to, the cost of repairing the
23 damage to the Project caused by the defective design, workmanship and materials; the cost of
24
25

correcting defective conditions and damage, as well as latent physical hazards, including investigative costs and scope-of-repair development costs as necessary components thereof; the loss of use of the units and common areas; the loss of the marketability of the units; operating and reserve expenses over and above those reasonably anticipated by the Association; and other consequential damages.

7.11 Pursuant to RCW 64.34.405(3) and the common law, Declarants and Declarants' Principals are liable for the misrepresentations in and omissions of material fact from the public offering statement.

7.12 Pursuant to the WCA, the Association is entitled to its reasonable attorneys' fees incurred in prosecuting this action.

VIII. FOURTH CLAIM – AGAINST DECLARANTS AND DECLARANTS' PRINCIPALS FOR FRAUDULENT CONCEALMENT

8.1 Declarants and Declarants' Principals, each by virtue of superior knowledge of the Project, and/or by virtue of knowledge of concealed defects and conditions that pose a danger to the property, health and lives of the unit purchasers and their invitees, each had an affirmative duty to disclose, or cause the Declarant to disclose, material facts regarding the physical condition of the Project to unit purchasers that were unknown to the unit purchasers, and which were not apparent on reasonable inspection.

8.2 Declarants and Declarants' Principals breached their duty to disclose concealed defects and conditions to unit purchasers.

8.3 Furthermore, Declarants and Declarants' Principals represented existing facts concerning the physical condition of the Project and the cost to maintain it in the public offering statement, which representations were material to the purchase of the units. Those representations

1 falsely characterized or failed to disclose the true physical condition of the Project, and understated
2 the costs to maintain it. Declarants and Declarants' Principals knew that these representations were
3 false, or were ignorant of their truth, and intended that unit purchasers at the Project rely on those
4 representations. For their part, unit purchasers were ignorant of the false character of these
5 representations in the public offering statement regarding the physical condition of the Project and
6 the cost to maintain it, and relied on the false representations in purchasing units (as was their right
7 under the Condominium Act), to their consequent damage.

8
9 8.4 As a direct and proximate result of fraudulent concealment by Declarants and
10 Declarants' Principals, Plaintiff has suffered property damage as described above, and has been
11 damaged in an amount in excess of \$75,000, to be determined at trial. Such damages include, but
12 are not limited to, the cost of repairing the damage to the Project caused by the defective design,
13 workmanship and materials; the cost of correcting defective conditions and damage, as well as
14 latent physical hazards, including investigative costs and scope-of-repair development costs as
15 necessary components thereof; the loss of use of the units and common areas; the loss of the
16 marketability of the units; operating and reserve expenses over and above those reasonably
17 anticipated by the Association, and other consequential damages.

18
19 **IX. FIFTH CLAIM – AGAINST DECLARANTS AND DECLARANTS' PRINCIPALS**
20 **FOR BREACH OF FIDUCIARY DUTY**

21 9.1 Some or all of the Declarants appointed some or all of the Declarants' Principals, or
22 other non-parties to this action, to act as the Association's Board of Directors during the period in
23 which the Declarants maintained control of the Association's affairs pursuant to RCW
24 64.34.308(4).
25

1 9.2 The members of the Association's Board of Directors so appointed by the
2 Declarants acted as agents of the Declarants in governing the Association.

3 9.3 The members of the Declarant-appointed board of directors, and their principals,
4 owed the Association's unit owners a fiduciary duty of undivided loyalty and care in managing the
5 affairs of the Association pursuant to RCW 64.34.308(1). Despite their fiduciary duty to the
6 Association's unit owners, at all times Declarant-appointed board members maintained their loyalty
7 to the Declarants, and acted to promote the interests of the Declarants instead of the unit owners.
8

9 9.4 On information and belief, during their tenure on the Association's Board, the
10 Declarant-appointed board members became aware, or should have become aware, of serious
11 construction defects in the Project, understatement of the operating budget established by
12 Declarants, and understatement of the Reserve Estimate as established by Declarants. Such
13 knowledge is imputed to the Declarants as principals.

14 9.5 The Declarants and Declarant-appointed board members failed to disclose to the
15 Association, or otherwise act reasonably in response to the facts of which they became aware
16 regarding the presence of defects, physical hazards, and understatement of the operating and
17 reserve budgets.
18

19 9.6 Though they knew or should have known of defective construction, physical
20 hazards, and poor physical condition of concealed portions of the Project, Declarants and
21 Declarant's Principals who served as board members failed to cause the Association to undertake
22 an investigation of the construction quality of the Project and physical hazards. Moreover,
23 Declarants and Declarant's Principals who served as board members failed to demand that the
24 Declarants repair and remedy the defects and physical hazards, or compel Declarants to do so.
25

1 9.7 Declarants and Declarant's Principals who served as board members negligently or
2 intentionally failed to adopt a reasonable budget and/or establish reasonable reserves during the
3 period of declarant control of the Association.

4 9.8 On information and belief, Declarants and Declarant's Principals who served as
5 board members negligently or intentionally failed to collect assessments due from Declarant on
6 unsold units.

7 9.9 Declarants and Declarant's Principals who served as board members negligently or
8 intentionally failed to monitor, inspect, supervise, or hire competent professionals to monitor,
9 inspect and supervise ongoing work by contractors and casual labor employed by Declarants to
10 make improvements to the Project's units and common elements, to ensure that such work was
11 properly performed.
12

13 9.10 The acts and omissions of Declarants and Declarant's Principals who served as
14 board members have caused, and continue to cause, property damage to the Project's units,
15 common elements, and limited common elements, as well as personal property of unit owners.
16

17 9.11 These breaches of duty proximately caused injury to the Association's unit owners
18 in an amount in excess of \$75,000, to be determined at trial which. Such damages include, but are
19 not limited to, the cost of repairing the damage to the Project caused by the defective design,
20 workmanship and materials; the cost of correcting defective conditions and damage, including
21 investigative costs and scope-of-repair development costs as necessary components thereof; the loss
22 of use of the units and common areas; the loss of the marketability of the units; operating and
23 reserve expenses over and above those reasonably anticipated by the Association, and other
24 consequential damages.
25

1 9.12 Pursuant to the WCA and/or other applicable law, the Association is entitled to its
2 reasonable attorneys' fees incurred in prosecuting this action.

3 **X. SIXTH CLAIM – AGAINST DECLARANTS AND DECLARANTS' PRINCIPALS**
4 **FOR VIOLATION OF THE CONSUMER PROTECTION ACT.**

5 10.1 Plaintiff re-alleges and incorporates by reference paragraphs 1.1 through 9.12 above.

6 10.2 The conduct of Declarants and Declarants' Principals as described above constitute
7 unfair or deceptive acts or practices in trade or commerce which impact the public interest in
8 violation of RCW 19.86 et seq.

9 10.3 As a proximate result of these unfair or deceptive acts or practices, the Association
10 has been damaged in an amount in excess of \$75,000, to be determined at trial which includes, but
11 is not limited to, the cost of repairing the damage to the Project caused by the defective design,
12 workmanship and materials; the cost of correcting defective conditions and damage, including
13 investigative costs and scope-of-repair development costs as necessary components thereof; the loss
14 of use of the units and common areas; the loss of the marketability of the units; operating and
15 reserve expenses over and above those reasonably anticipated by the Association, and other
16 consequential damages.
17

18 10.4 Pursuant to Chapter 19.86 RCW, the Association is entitled to its reasonable
19 attorneys' fees incurred in prosecuting this action.
20

21 **XI. SEVENTH CLAIM – AGAINST DEVELOPER DEFENDANTS FOR**
22 **DISGORGMENT OF FRAUDULENT TRANSFERS.**

23 11.1 The Association is informed and believes, and on that basis alleges, that the
24 Declarants have engaged in improper conveyances within the meaning of RCW 19.40.041 and
25 19.40.051 in that:

1 a. All or some have transferred assets without receiving a reasonably equivalent value
2 in exchange for the transfer or the obligation, and each transferor (i) was engaged or about to
3 engage in a business or a transaction for which the remaining assets were unreasonably small in
4 relation to the business or transaction; or (ii) intended to incur, or believed, or reasonably should
5 have believed that it would incur, debts beyond its ability to pay as they became due; and/or

6 b. All or some made transfers or incurred obligations without receiving a reasonably
7 equivalent value in exchange for the transfer or obligation, and each was insolvent at the time or
8 became insolvent as a result of the transfer or obligation; and/or

9 c. The transfer was made to an “insider” for an antecedent debt, the transferor was
10 insolvent at that time, and the insider had reasonable cause to believe that the transferor was
11 insolvent.
12

13 11.2 As a result of the improper conveyances, the Association is entitled to all of the
14 remedies set forth in RCW 19.40.071 and 19.40.081, including but not limited to:

15 a. Attachment of property;

16 b. Avoidance of the transfer or obligation to the extent necessary to satisfy the
17 Association’s claim; and
18

19 c. An injunction against further disposition by Declarants and their transferees of the
20 assets transferred or of other property.

21 **XII. EIGHTH CLAIM – FOR IMPROPER WINDING UP**

22 12.1 On information and belief, defendants SCOTT A. HAMILTON and SHIMON
23 KABILI negligently or intentionally failed to exercise their duties of due care in winding up the
24 affairs of HOLTON KABILI SEATTLE, LLC under Colorado Revised Statutes §7-80-404(2), and
25 failed to act consistently with their obligations of good faith and fair dealing under Colorado

Revised Statutes §7-80-404(3), by, among other things, failing to make reasonable provision for Holton Kabil Seattle, LLC to fulfill its ongoing obligations and/or respond to claims.

12.2 On the same information and belief, the Association contends that in failing to make reasonable provision for claims against HOLTON KABILI SEATTLE, LLC which claims reasonably should have been expected, defendants SCOTT A. HOLTON and SHIMON KABILI failed to properly wind up HOLTON KABILI SEATTLE, LLC in violation of their fiduciary duty the LLC's creditors, including their duties the Association and its unit owners. Said fiduciary duty arose at the latest when it became apparent that HOLTON KABILI SEATTLE, LLC would become or would be rendered insolvent.

12.3 By reason of said violation of their duties in winding up HOLTON KABILI SEATTLE, LLC, and/or by reason of their breaches of fiduciary duties to creditor of HOLTON KABILI SEATTLE, LLC, plaintiffs are entitled to some or all of the following remedies: an order piercing the corporate veil of HOLTON KABILI SEATTLE, LLC and imposing liability of the declarant HOLTON KABILI SEATTLE, LLC directly on defendants SCOTT A. HOLTON and SHIMON KABILI; imposition of a constructive trust on all distributed and undistributed assets of HOLTON KABILI, LLC, as well as on the proceeds of such assets; an order directing the members and transferees of HOLTON KABILI SEATTLE, LLC to disgorge assets or equivalent funds to HOLTON KABILI SEATTLE, LLC.

XIII. PRAYER FOR RELIEF

WHEREFORE, the Association prays as follows:

14.1. For judgment against the Declarants and Declarants' Principals, jointly and severally, for damages, including punitive damages, according to proof for:

- 1 a. Breach of implied warranties of quality under the Washington Condominium
2 Act;
3 b. Failure to provide public offering statement and/or to amend the public
4 offering statement;
5 c. Misrepresentations in and/or omissions of material fact;
6 d. Fraudulent concealment;
7 e. Breach of fiduciary duty;
8 g. Liability as principal for agent's breach of fiduciary duty;
9 h. Violation of the Consumer Protection Act;
10 i. Attorney fees pursuant to statute and/or contract;
11

12 14.2. For a judgment or order(s) for avoidance of all improper transfers or obligations to
13 the extent necessary to satisfy the Association's claims, and of injunction against further disposition
14 by the Declarants and their transferees of the assets transferred or of other property;
15

16 14.3. For a judgment or order(s) piercing the corporate veil of HOLTON KABILI
17 SEATTLE, LLC and imposing liability of the Declarant HOLTONA KABILI SEATTLE, LLC
18 directly on defendants SCOTT A. HOLTON and SHIMON KABILI;
19

20 14.4. For a judgment or order imposing a constructive trust on all distributed and
21 undistributed assets of HOLTON KABILI SEATTLE, LLC as well as on the proceeds of such
22 assets; and/or an order directing the members and transferees of HOLTON KABILI SEATTLE,
23 LLC to disgorge assets or funds to HOLTON KABILI SEATTLE, LLC;
24

25 14.5. For such other and further relief as the Court may deem just and equitable.

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XIV. DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands a jury trial of all issues triable of right by a jury.

XV. CORPORATE DISCLOSURE STATEMENT

Plaintiff, Aspen Grove Owners Association (the "Association") is a Washington nonprofit corporation organized pursuant to RCW 64.34.300. The Association has no parent corporation and no publicly held corporation owns ten percent or more of the Association's stock.

DATED this 11th day of August, 2008.

LEVIN & STEIN

By: 

Jerry H. Stein
Daniel S. Houser
Attorneys for Plaintiff